

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

D. R., et al.,
Plaintiffs,
v.
CONTRA COSTA COUNTY CA, et al.,
Defendants.

Case No. 19-cv-07152-MMC

**ORDER GRANTING DEFENDANT
BRIAN STERN'S MOTION TO
DISMISS; AFFORDING PLAINTIFFS
LEAVE TO AMEND**

Before the Court is defendant Brian Stern's ("Stern") Motion, filed February 10, 2022, "to Dismiss Plaintiffs' Third Amended Complaint." Plaintiffs have filed opposition, to which defendant has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court rules as follows.¹

In the operative complaint, the Third Amended Complaint ("TAC"), deemed filed October 5, 2021 (see Order, filed October 20, 2021, at 3), plaintiffs, on behalf of plaintiff John Freeman ("Freeman"), assert a single claim against Stern, specifically, the Fifth Cause of Action, titled Legal Malpractice. In said Cause of Action, plaintiffs allege Stern, who represented Freeman in a juvenile dependency proceeding, "failed to advise and assist Freeman to obtain paternity by operation of law through the Voluntary Paternity Acknowledgment program." (See TAC ¶ 274.)

In seeking dismissal of the Fifth Cause of Action, Stern argues the claim is barred by the applicable statute of limitations, specifically, California Code of Civil Procedure § 340.6, which provides that "[a]n action against an attorney for a wrongful act or

¹ By order filed March 22, 2022, the Court took the matter under submission.

1 omission, other than for actual fraud, arising in the performance of professional services
 2 shall be commenced within one year after the plaintiff discovers, or through the use of
 3 reasonable diligence should have discovered, the facts constituting the wrongful act or
 4 omission, or four years from the date of the wrongful act or omission, whichever occurs
 5 first." See Cal. Code. Civ. Proc. § 340.6(a).

6 On June 28, 2018, Stern was appointed by the state court to represent Freeman;
 7 the representation ended May 22, 2019, when the dependency proceeding was
 8 dismissed. (See Def.'s Req. for Judicial Notice Ex. A, G.)² In the TAC, plaintiffs allege
 9 that, "[o]n or about October 5, 2020," more than a year after the representation ended,
 10 "Freeman found out about the Voluntary Paternity Acknowledgment procedure that Stern
 11 failed to advise him to carry out." (See TAC ¶ 277.) As Stern correctly points out, the
 12 TAC fails to include any factual allegations to explain how Freeman, on or about October
 13 5, 2020, "found out" about the program and why he could not have reasonably
 14 discovered the existence of the program prior to that date. In the absence of such factual
 15 allegations, Stern fails to state a timely claim. See Grisham v. Philip Morris U.S.A., Inc.,
 16 40 Cal.4th 623, 638 (2007) (holding "California law recognizes a general, rebuttable
 17 presumption, that plaintiffs have knowledge of the wrongful cause of an injury," and, to
 18 rebut such presumption, a plaintiff "whose complaint shows on its face that his claim
 19 would be barred without the benefit of the discovery rule must specifically plead facts to
 20 show (1) the time and manner of discovery and (2) the inability to have made earlier
 21 discovery despite reasonable diligence"); see also Ashcroft v. Iqbal, 556 U.S. 662, 678
 22 (2009) (holding courts are "not bound to accept as true a legal conclusion couched as a
 23 factual allegation"; internal quotation and citation omitted).

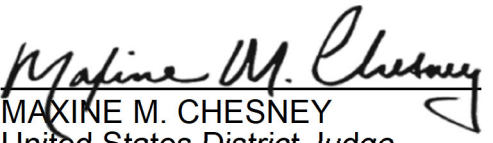
24 Accordingly, Stern's motion to dismiss is hereby GRANTED. If plaintiffs wish to file

25
 26 ² Stern's unopposed request that, for purposes of determining when he
 27 represented Freeman, the Court take judicial notice of various state court records is
 28 hereby GRANTED. See Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001)
 (holding "court may take judicial notice of matters of public record") (internal quotation
 and citation omitted).

1 a Fourth Amended Complaint for purposes of amending the Fifth Cause of Action,
2 plaintiffs shall file such amended pleading no later than April 22, 2022. Plaintiffs may not,
3 however, add any new claims without first obtaining leave of court. See Fed. R. Civ. P.
4 15(a)(2). If plaintiffs do not timely file a Fourth Amended Complaint, the instant action will
5 proceed on the claims remaining in the TAC.

6 **IT IS SO ORDERED.**

7
8 Dated: April 4, 2022


MAXINE M. CHESNEY
United States District Judge

United States District Court
Northern District of California